

**Guidelines to the FOS Terms of Reference  
(Investments, Life Insurance and Superannuation)  
Clause 24 – Dismissing a complaint for failure to respond to  
correspondence**

1 July 2008

1. Background
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3. Criteria and procedure for reinstating a complaint

**1. Background**

FOS has an obligation to do what in its opinion is fair in all the circumstances to resolve complaints and must resolve complaints in a co-operative, efficient and timely way.

On occasion, a consumer may fail to respond to FOS for an extensive period, despite considerable efforts to contact them. This may be for a number of reasons, either beyond the control of the consumer or within their control, but in the absence of any information from the consumer, FOS cannot know what those reasons are.

While a complaint file can be closed in these circumstances, a complaint to FOS can only be truly finalised when it is resolved by agreement, determined by the Panel or Adjudicator, or dismissed.

Clause 24 of the Investments, Life Insurance and Superannuation Terms of Reference provides a mechanism to dismiss complaints where the failure to respond appears to be serious and prolonged enough to justify this step.

**24 Failure by complainant to respond to requests for information or other correspondence**

- 24.1 Where a complainant fails to respond to correspondence or a request for information from the Service within the time allowed for such a response, the Investments, Life Insurance and Superannuation Ombudsman or delegate may write to the consumer requiring a response to that correspondence or request within one calendar month failing which the complaint may be dismissed.
- 24.2 If the complainant fails to respond within one calendar month after a letter is sent under Rule 24.1, the Investments, Life Insurance and Superannuation Ombudsman or delegate may dismiss the complaint.
- 24.3 Where the Investments, Life Insurance and Superannuation Ombudsman or delegate dismisses a complaint under this Rule, he or

she must notify the complainant of this in writing sent to the complainant's last known address. This notification must set out the complainant's rights to have the complaint reinstated and any time limit for exercising those rights.

24.4 If the complainant requests that the complaint be reinstated within 3 calendar months of having been sent such notification, the complaint will be reinstated as of right.

24.5 If the complainant first requests that the complaint be reinstated more than 3 calendar months after the Service sent him or her such notification, then the complaint will be reinstated if the complainant has reasonable reasons for not seeking reinstatement within the initial 3 calendar month period; and for failing to respond to correspondence or to provide the requested information.

The intention of Rule 24 is to strike a balance between (on the one hand) the desirability of resolving complaints promptly, and (on the other hand) the need not to deny consumers access to the FOS scheme by too readily dismissing their cases without a hearing on the merits, particularly where consumers because of their circumstances may have difficulty meeting strict deadlines.

## **2. Criteria and procedure for dismissing a complaint under Rule 24**

Under Clause 24, a complaint may be dismissed if:

- The consumer fails to respond to correspondence, or to a request for information, by the deadline set for a response; and
- A warning letter is sent to the consumer's last known address, saying that unless they respond within a further calendar month, the complaint may be dismissed; and
- The consumer does not respond within that further calendar month.

Before setting in motion the procedure to dismiss a complaint for failure to respond, FOS will attempt to follow up with the consumer and to obtain their response.

A decision to send the warning letter (and initiate the dismissal process) will be made after FOS is satisfied reasonable efforts have been made to contact the consumer and have not resulted in a response. Other relevant considerations such as the length of the delay and any past history of delay or failure to respond to correspondence may also be taken into account.

Active refusal to provide information which has been requested by FOS, or responses which do not contain information that FOS has previously requested, will not normally constitute a "failure to respond" if the consumer otherwise remains in contact with FOS. The purpose of Rule 24 is to enable FOS to finalise a complaint where the consumer fails to keep in contact with FOS.

### **3. Criteria and procedure for reinstating a complaint**

If the consumer requests reinstatement of their complaint and the request is received within 3 months of the consumer being notified that the complaint was dismissed, the complaint will automatically be reinstated.

If the request is received more than 3 months after the consumer was notified that the complaint was dismissed, the complaint will only be reinstated if the consumer has reasonable reasons:

- For not contacting FOS to reinstate the complaint within the 3 month period; and
- For the original failure to respond to correspondence.

In considering the reasonableness of any explanation offered by the consumer, FOS will take into account whether and to what extent the reasons relate to factors outside the control of the consumer. The consumer may be asked to provide evidence to substantiate the reasons given.

Allowing the consumer to reinstate the complaint may prejudice the member. Before a decision is made to reinstate a complaint outside the initial 3 month period, the member will be contacted and given the opportunity to make submissions on whether the complaint should be reinstated.

A decision will be made on whether or not to reinstate the complaint after considering the reasons given for the delay and any submissions or evidence provided by either party.